

**AN EVALUATION OF THE FAIR LABOR AND STANDARDS ACT AND ITS
IMPLICATIONS TO FIRE AGENCIES IN LOS ANGELES COUNTY**

STRATEGIC MANAGEMENT OF CHANGE

By: Edward Bushman
Captain
Los Angeles Fire Department
Los Angeles, California

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Abstract

The Fair Labor and Standards Act (FLSA) was introduced in 1938. Through various court decisions and congressional revisions, it has been expanded to cover all employees. The FLSA found in the Code of Federal Regulations (CFR), title 29, dictates that all employees who work more than 40-hours per week are entitled to overtime compensation. However, certain classes of employees are exempted from the 40-hour per week rule. Firefighters are exempt and may work up to 53-hours per week. The exemption found in section 7(k) of 29CFR, part 553 and is named the 7(k) exemption. Fire Departments have applied this exemption to all personnel. One misinterpretation is including paramedics and EMTs under the 7(k) exemption.

In cases like Alex v. Chicago (93-2627) and others documented below, the precedence has been set that paramedics and EMTs engaged exclusively in EMS activities do not qualify for the 7(k) exemption. The issue is that many firefighters respond to EMS calls as part of their normal duties. The regulations clearly permit integration of EMS and fire protection activities, however, the extent may determine if the overtime exemption may be used.

The purpose of this applied research project is to evaluate the 7(k) exemption and to determine the legal exposure of fire protection agencies in Los Angeles County.

An evaluative research method was used to determine answers to the four research questions. The questions are:

- What are the applicable areas of the FLSA act for firefighter and paramedics?

- How are the fire agencies in Los Angeles County configuring their EMS systems?
- Does this Configuration reduce the exposure to possible FLSA legal liabilities?
- What can fire agencies do to reduce possible legal liabilities?

The literature search found numerous cases documenting legal challenges to the 7(k) exemption. The research found that, although no cases have been heard in the Ninth Circuit governing California, other courts have determined that an essential part of being able to use the 7(k) exemption is responding EMS personnel to fires as an integral part of their fire protection duties. The courts have determined that if a member does not respond to fires, then that member cannot be considered a firefighter, and cannot be classified under 7(k).

The procedures consisted of a telephonic survey to all fire agencies in Los Angeles County (n=35). The survey asked each for the EMS system configuration for each agency. In addition, the survey asked if the 7(k) exemption was being used to determine overtime pay. The survey also asked if the departments responded their EMS personnel to fires.

The research found that all departments in Los Angeles County are responding their EMS resources to fires, except the Los Angeles City Fire Department.

Based upon the research it was recommended that the Los Angeles Fire Department revisit their dispatch protocols and fireground operations to include dual function firefighter/paramedics on fire dispatches. In addition, the Los Angeles Fire

Department and the Los Angeles City Attorney must actively explore and investigate the city's legal responsibilities in regards to past practices.

Also, all departments should maintain accurate records, including task-on-time that personnel are involved. These records should also include the time spent on emergency activities and training. In addition, you should track personnel assignments and frequency of rotation between different type of apparatus. Proper documentation will show that members do have the responsibility and authority to engage in fire protection.

Concurrently, all departments continually monitor relevant court cases to identify the court's interpretation of the FLSA. And lastly, all departments take an active role with the Department of Labor and their elected officials to clarify the issue of EMS personnel and the 7(k) exemption.

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Introduction

Grant and Hoover (1994), found in 1938 Congress enacted the “Wage and Hour Law” which established the minimum hour and wage standards. Through numerous court cases, the law was determined to be applicable to all employees, including government workers. In 1984, Congress modified the law, now called the “Fair Labor and Standards Act” (FLSA), and created exemptions for certain workers. One exemption, found in section 7(k), stated that firefighters could work up to 53 hours per week before overtime compensation is required (29USC553.207). The problem is that the 7(k) exemption has been misinterpreted or misapplied, thus opening fire agencies to legal and fiscal liabilities.

Whitehead (1995) stated that questions about the proper interpretation of the FLSA has risen because of court decisions involving EMS personnel and their overtime rights. In cases like Alex v. Chicago (93-2627) and others documented below, the precedence has been set that paramedics and EMTs engaged exclusively in EMS activities do not qualify for the 7(k) exemption. The issue is that many firefighters respond to EMS calls as part of their normal duties. The regulations clearly permit integration of EMS and fire protection activities, however, the extent may determine if the overtime exemption may be used.

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- How are the fire agencies in Los Angeles County configuring their EMS systems?
- Does this Configuration reduce the exposure to possible FLSA legal liabilities?
- What can fire agencies do to reduce possible legal liabilities?

Background and Significance

Grant and Hoover (1994) found that in 1938, Congress enacted the “Wage and Hour Law”. This law established the nationwide minimum wage and maximum hour standards for the first time. The 40-hour workweek and time and one-half for all overtime hours applied to the private sector only.

Grant and Hoover (1994) found that in 1966, Congress extended the law to cover certain school, hospital, nursing home, and transit employees of states and local governments. These amendments were challenged in Maryland v. Wirtz (1968) based upon the belief that Congress was impeding on local government’s jurisdiction. On June 10, 1968 the Supreme Court decided that Congress had not overstepped its bounds by enacting the regulations.

Lovendusky (1985) stated that using the Maryland v. Wirtz (1968) decision, Congress amended and expanded the law in 1974 to include all state and local government employees except for a small number that were specifically exempted. This

became known as the Fair Labor and Standards Act” (FLSA). The amendments included limited overtime compensation for firefighters and police officers, and related employees.

In 1976, the regulations were again challenged and the Supreme Court reversed itself. In National League of Cities v. Usery (1976) the Court held that both the 1966 and 1974 amendments were unconstitutional to the extent that they interfered with the integral or traditional governmental functions and their political subdivisions.

In 1985, the Supreme Court overturned National League of Cities v. Usery (1976) and ruled that states and local governments were subject to federal rules concerning wages and overtime compensation. Garcia v. San Antonio Metropolitan Transit Authority (1985) left FLSA fully applicable to state and local governments.

Pols (1987) found that on Jan 16, 1986, the Department of Labor (DOL) codified the 1974 amendments and the 1985 amendments in to regulations. Because of the unique nature of public safety positions, Congress passed legislation in response to the Garcia ruling that has special provisions for firefighter compensation. These regulations took effect on February 17, 1986. The DOL regulations include provisions, which provide a partial overtime exemption for police officers and firefighters. Under the provisions, firefighters may work up to 212 hours in a 28-day period (the equivalent of a 53-hour workweek) before the overtime provisions of the FLSA came into effect. Other types of city employees are entitled to overtime compensation (cash or time) if they work more than 40-hours in a week. The exemption for firefighter and law enforcement personnel are delineated in Title 29 of the Code of Federal Regulations, section 7(k) of Part 553 of the Fair Labor and Standards Act.

The definition of firefighter can be found in Title 29 of the Code of Federal Regulations, part 553, section 210, which states that any employee engaged in fire protection activities refers to any employee:

(1) who is employed by an organized fire department or fire protection district;

(2) who has been trained to the extent required by State or local ordinance;

(3) who has the legal authority and responsibility to engage in the prevention, control, or extinguishment of fire of any type; and

(4) who performs activities which are required for, and directly concerned with, the prevention, control, or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills and inspecting homes and schools for fire hazards. The term would also include rescue and ambulance service personnel if such personnel form an integral part of the agency's fire protection activities. This is described as the "four-part test" to determine 7(k) eligibility.

It may include such employees during emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described above.

29CFR553, section 212 states that employees engaged in fire protection or law enforcement activities as described in section 210 and 211, may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire

protection activities. The performance of such nonexempt work will not defeat the section 7(k) exemption unless it exceeds 20 percent of the total work hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection activities. This has been described as the 80/20 rule.

29CFR553, section 215 deals with ambulance and rescue service employees. It states that ambulance and rescue service employees of a public agency may be treated as employees engaged in fire protection activities contemplated in section 7(k) if their services are substantially related to firefighting in that:

- (1) The ambulance and rescue service employee has received training in the rescue of fire, crime and accident victims.
- (2) The ambulance and rescue service are regularly dispatched to fires, crime scenes or riots.

Whitehead (1995) found that departments have misinterpreted the FLSA provisions. One misinterpretation is including paramedics and EMTs under the 7(k) exemption. On July 21, 1994, the Seventh Court of Appeals found that paramedics in the City of Chicago did not qualify for the 7(k) exemption. In Alex v. Chicago (1994), single function paramedics filed suit to recover lost overtime wages based upon the fact that they were not firefighters. Bynoe (1995) found that the court agreed and the city was liable for 14 million dollars in back pay and liquid damages. The U. S. Supreme Court announced December 12, 1994, that it would not review the appellate court decision and let the award stand.

Anchorage, Alaska settled claims with paramedics who were paid under the 7(k) exemption and filed suit. The city was settled and paid 1.4 million dollars to 41, present and former paramedics, who claimed that they should have been paid overtime after 40-hours per week rather than 53-hours (Firefighter, 1995).

Chamberlin (1999) stated that in June 1997, single-function paramedics of the Los Angeles City Fire Department filed suit because they felt that they were paid unfairly under the 7(k) exemption. The plaintiffs in Acrich et al. Los Angeles (1999) claimed that single-function paramedics are being paid wrong under FLSA and may not be classified under section 7(k). On September 14, 1998, United States District Judge Hump ruled that the plaintiffs were not 7(k) employees but rather 40-hour per week employees.

Ludwig (1995) stated that the implementation of the 7(k) exemption needs to be examined in order to prevent future litigation and increased legal liabilities. In the future, these types of cases will continue to be filed. Employees are becoming more aware of their legal rights under the FLSA and challenging their overtime pay schedules. The end results are that municipal governments are being forced to pay overtime to EMS workers after 40-hours per week or hire more staffing to reduce to hours worked.

This research project was completed according to the Applied Research Guidelines for the National Fire Academy's Executive Fire Officer Program. The problem addressed by this research project related specifically to the "Strategic Management of Change" course. This project analyzes the problem for the strategic change model.

Literature Review

The literature review consisted of an examination of the available articles in fire and legal publications. In addition, the National Fire Academy's Learning Resource Center was accessed for information.

Lovendusky (1985) found that it is common practice for firefighters to be trained as EMTs or paramedics, contrary to the experience of the 70s. Firefighter/EMTs are the first responders to all incidents at which emergency medical care may be required. As a result, the number of actual emergencies to which firefighters now respond has increased dramatically over the past years. Considering the dual roles, the firefighter's treatment under the FLSA is ironic.

Lovendusky (1985) states that the firefighter who is cross-trained as an EMT and who responds to both medical and non-medical emergencies is subject to the unique provisions of section 7(k) and is not eligible for overtime pay until he works 53 hours per week or 212 hours over a 28-day period. Yet, the EMT working in a separate municipal department, fulfilling one role is eligible for overtime compensation after 40 hours per week or 160 hours in a 28-day period.

However in 1990, firefighters working for the same municipal department filed suit to regain lost overtime wages. They felt that they should not fall under the 7(k) exemption. West v. Anne Arundel County, Maryland (1990) was filed by county firefighters (initially academy trained) who had moved into the EMS functions. They challenged their exemption under FLSA. Two similar cases, involving Baltimore City and Baltimore County, were joined and assigned together to the same court. The judge

agreed with the plaintiffs and awarded three years back pay. The case was appealed to the United States Court of Appeals for the Fourth Circuit and upheld.

Whitehead (1995) found that some observers have suggested that the judge's opinion may prevent courts from allowing use of the 7(k) exemption for dual-function firefighters. However, this concern is unjustified. A close reading of the judge's decision reveals that the court believed that these dual-function firefighters were essentially paramedics and that some of them "tangentially" performed fire and rescue work.

Dittmar (1995) documented that in Alex v. Chicago (1994), City of Chicago EMS personnel challenged their exemption under FLSA on the basis that department paramedics did not engage in fire suppression activities. Here single-function paramedics filed suit to recover back pay because they were subjected to the 7(k) exemption. The Seventh Circuit Court of Appeals found the city liable for back wages and liquid damages and awarded the plaintiffs 14 million dollars. On December 12, 1994, the Supreme Court announced that it would not review the Court of Appeals decision.

Whitehead (1995) found that in FLSA suits involving single-function EMS employees, federal courts in many states have ruled that public agency employers cannot take advantage of the 7(k) exemption. This result should not be surprising because of the plain language, as written by congress, is limited to employees "in fire protection services." Simply put, single function paramedics who have no meaningful training or responsibilities in the area of fire protection should not be treated as if they did in order to reduce overtime costs.

Ludwig (1995) stated that questions about the proper interpretation of the 80/20 rule have risen because of court decisions involving EMS personnel and their overtime rights. It is not an issue for many firefighters who spend less than 80 percent of their time of fire protection activities because the regulations clearly permit integration of EMS and fire protection activities. However, the courts have decided that paramedics and EMTs engaged exclusively in EMS activities do not qualify for the 7(k) exemption.

.On February 9, 1995 the International Association of Firefighters (IAFC) received a letter from Daniel Sweeney, Deputy Assistant Administrator of the Department of Labor's Wage and Hour Division (WHD). The letter states in part, "We (WHD) have concluded that firefighters who are cross-trained as EMTs qualify for exemption under 7(k) as fire protection employees where they are principally engaged as firefighters." The letter continues, "Under these circumstances, we would consider that ambulance and rescue activities are incidental to the employees fire protection duties within the fourth test in 29 CFR Section 553.210(a)." (FLSA 80/20, 1995)

In Anchorage, Alaska, paramedics, like firefighters, worked a 56-hours week and were paid overtime after 53 hours. The city considered the paramedics and firefighters under same job classification and used the 7(k) exemption to determine overtime. In May 1994, the federal judge ruled that the paramedics did not fit under the 7(k) exemption. The settlement was reached to avoid the federal judge setting damages. (Firefighter FLSA, 1995)

Although a lower court dismissed Wouters v. Martin County on summary judgement, the Eleventh Court of Appeals reversed the lower court decision in December 1993, ruling that the 80/20 rule should be applicable to rescue ambulance work. The

Court stated that only those public agencies whose ambulance and rescue service workers spend at least 80 percent of their work hours in fire suppression activities are eligible for the 7(k) exemption. (Supreme Court, 1994)

In West v. Anne Arundel County, Maryland (1990), dual function firefighters sued the county, alleging violations of the FLSA in calculating their overtime. The suit alleged that the county used the 7(k) exemption to calculate the overtime of employees who were not firefighters. The U. S. District court ruled in favor of West imposing a retroactive liability of 4 million dollars.

The Fourth Court of Appeals heard the case and ruled in favor of the firefighters. The court found that the FLSA rules allow firefighters to do non-firefighting work for up to 20 percent of the time, but the court pointed out, EMS responses constitutes 50 percent or more of the total call volume in any fire department. The court found the overriding factor was the four-part test. The firefighters in Ann Arundel County were prohibited from active participation in fire suppression

Alfred Whitehead (1995), president of the International Association of Firefighters states that it is IAFF's position that firefighters who are also trained to perform as EMTs or paramedics are still covered by the 7(k) exemption. The 80/20 regulation was not designed, and should not be interpreted, to deprive local governments and their fire departments from using the overtime savings offered by section 7(k) in an integrated system that employs fire protection personnel who are assigned related tasks in EMS.

Procedures

Methodology

The procedures used in this research project include a literature search of relevant fire sources and a search of applicable court cases. The National Fire Academy Learning Resource Center was accessed to gain information about the FLSA and previous research projects.

Additional background material was obtained from various practicing attorneys specializing in the FLSA and labor law. This included the attorney involved in the Los Angeles Fire Department Cases and the City Attorney.

The procedure used to gather the data in this research project was a telephonic survey to the Operations, EMS, or Employee Relations Chief of each department. A telephonic survey of all 35 fire departments in Los Angeles County was conducted. The survey (Appendix B) consisted of demographic questions regarding the structure of the department and its EMS delivery program. The survey then asked the hours and whether the 7(k) exemption was used to determine overtime pay. The survey then asked if the EMS providers respond to fires.

A telephonic survey was used in order ensure accuracy in the results and the ability to ask follow-up questions. In addition, this allowed for a larger response size that can be anticipated using a mail-in survey.

Limitations

The limitations for this research project include the lack of published court cases in the Ninth Court of Appeals. The legal precedent guiding the four-part test and the

80/20 rule has not been established for the states of California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, Guam and the Northern Mariana Islands.

Definition of Terms

This list is provided to provide readers understanding of uncommon terms noted in the body of this paper.

FLSA: Fair Labor and Standards Act as described in 29CFR553.

Firefighter: For the purposes of this paper, firefighter with or without EMT training.

Single function: For the purposes of this paper, single-function is defined as EMS trained (paramedic or EMT level) without firefighter training.

Dual Function: A member trained in firefighting and paramedic certified.

Four-part test: To be considered a firefighter for 7(k) purposes, employees must pass the “Four-part test.” First, they must be employed by an organized fire department. Second, they must be. Third, they must have the legal authority to fight fires. Fourth, they must perform firefighting activities as part of their jobs. If an employee does not meet each part of this test, s/he is not considered a firefighter for 7(k) purposes.

7(k) exemption: 29CFR553, section 207 of the Fair Labor and Standard Act which exempts fire protection and law enforcement personnel from the 40-hour per week overtime requirements.

80/20 Rule: 29CFR553, section.212 of the Fair Labor and Standard Act which states that employees engaged in fire protection or law enforcement activities, as described in sections 210 and 211, may also engage in some nonexempt work which is

not performed as an incident to or in conjunction with their fire protection activities. The performance of such nonexempt work will not defeat either the section 13(b) or 7(k) exemptions unless it exceeds 20 percent of the total work hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection activities.

Results

The final results of the survey are documented in the table (Appendix A). The results of the survey showed that 21 fire departments in Los Angeles County have an ALS transport system. Five departments have an ALS Non transport system with dual function firefighter/paramedics responding on engine companies and trucks. Three departments use single function firefighter to respond on engines and trucks in a BLS non-transport system. Santa Fe Springs and West Covina have a combination of ALS and BLS non-transport resources. The Los Angeles Fire Department and the San Gabriel Fire Departments use ALS and BLS transport ambulances. Hermosa Beach Fire Department has an ALS ambulance, an ALS engine, and a BLS ambulance staffed by reserves.

Avalon, a small city located on the island of Catalina 20 miles off the Los Angeles coast, uses Los Angeles County Lifeguards to provide ALS care. The Avalon Fire Department then provides BLS transport services.

The survey found that all the departments using an ALS system use dual function firefighter/paramedics. The Los Angeles Fire Department (LAFD) uses both single-function paramedics and dual-function firefighter/paramedics on its ALS ambulances. The LAFD also uses firefighters on its BLS ambulances.

The survey found that 33 of the 35 departments use a 24-hour shift schedule. The exceptions are the JPL Fire Department, which uses 3 overlapping 9-hour shifts, and Sierra Madre Fire Department, which uses 12-hour shifts.

The survey found that all the departments, except for the JPL Fire Department, pay overtime for any hours worked in excess of 53 per week. The JPL Fire Department is contracted by the federal government to provide fire protection to the labs, and therefore, they do not fall under the definition of a public agency.

The survey found that all departments, except the Los Angeles Fire Department, respond their firefighter/paramedics to fire calls.

Research Question 1. What are the applicable areas of the FLSA act for firefighter and paramedics?

The applicable areas of the FLSA act for firefighter and paramedics are title 29 of the code of Federal Regulations, section 553.201 and section 553.207. These sections delineate the requirements for overtime payments. However, these sections are just the legal framework that the courts have begun to fill in. Recent court decisions have begun to give meaning to phrases like “integral part”, and how to apply the four-part test. These court decisions include, but are not limited to West V. Anne Arundel County, Maryland (1998), Alex v. City of Chicago (1993), and Christian v. City of Gladstone, Missouri (1997).

Research Question 2. How are the fire agencies in Los Angeles County configuring their EMS systems?

The results of the survey showed that 21 fire departments in Los Angeles County use dual function firefighter/paramedics in an ALS transport system. Five departments have an ALS non-transport system with dual function firefighter/paramedics responding on engine companies and trucks. Three Departments use single function firefighters to respond on a BLS non-transport system. Santa Fe Springs and West Covina have both ALS and BLS engine companies for a non-transport system. The Los Angeles Fire Department and the San Gabriel Fire Departments use ALS and BLS transport ambulances. Hermosa Beach Fire Department has an ALS ambulance, an ALS engine, and a BLS ambulance staffed by reserves

The Avalon fire Department has a unique system of overtime payments. Members work 24-hour shifts, a 56-hour week, however, they receive pay based upon a 40-hour week. 24-hour overtime shifts are paid at a rate of one and a half for 14 hours. The researcher did not explore this system in depth.

The Jet Propulsion Laboratory Fire Department is under contract to provide fire protection to the Jet Propulsion Laboratory facilities in Pasadena. Therefore, it does not fall under the qualifications of a “Public Agency” as defined in section 29CFR533.202 and thus is not entitled to use section 7(k) to determine overtime to its members. These members work 9-hour shifts, and are paid overtime after 40 hours.

The survey found that out of all the departments, only the Los Angeles City Fire Department did not respond its dual function firefighter/paramedics to fire incidents.

Research Question 3. Does this Configuration reduce the exposure to possible FLSA legal liabilities?

The department's configuration does reduce exposure to legal liabilities. Of the departments in Los Angeles County, only the Los Angeles Fire Department does not respond its firefighter/paramedics to fires. This may open the LAFD to additional lawsuits and damages.

Research Question 4. What can fire agencies do to reduce possible legal liabilities?

In order to reduce possible legal liabilities, fire agencies should fully prescribe to the dual-role designation of personnel. And if you use dual function cross-trained personnel, it is essential that they perform firefighting activities from all perspectives.

In Nalley v. Baltimore (1992) the court found that “paramedics who are not permitted to fight fires or enter a burning building and who are only dispatched to fires to treat injured individuals are not engaged in fire protection activities under the four-part test.”

As documented by Ludwig (1995) Anchorage, Alaska instituted dual-function positions where a firefighter/paramedic rotates between fire apparatus and ambulance positions. Various courts have upheld these programs.

Discussion

Maria Echaveste, administrator to the Labor Department's Employment Standards Administration wrote a letter to the International Association of Fire Firefighter's president Alfred Whitehead documenting the Labor Department's position. According to Ms. Echaveste, "a firefighter qualifies for the 7(k) exemption if s/he passes the four part test including the control and extinguishment of any type of fire." (FLSA 7(k), 1995)

In West v. Anne Anudel (1998), the firefighters assigned to the ambulance did not respond to the fires. In addition, when they did respond, they were prohibited from fighting the fire in order to remain "clean" and available for an EMS incident. The Fourth Circuit Court found in favor of the firefighters that they did not fall under section 7(k).

On December 7, 1998, the Supreme Court refused to hear West v. Anne Aundel County (1998). The refusal does not equate with affirmation, however, it certainly suggests that departments had better be extremely careful concerning assignments of EMS personnel. The Fourth Circuit stated that because the EMS personnel had virtually no participation in fire protection duties, and were restricted to medical calls, they did not qualify for the exemption.

In Christian v. Gladstone (MO) (1997), firefighters assigned to ambulances responded to fire as a part of their job. However they filed suit using the 80/20 rule stating that they spent more than 20 percent of their time on non-exempt activities. Here the court found that the firefighter did meet the four-part test and that they did have the legal authority and responsibility to fight fires. The Eight Court of Appeals found that

the four-part test over-ruled the 80/20 rule and found that the firefighter assigned to the ambulances were covered by the 7(k) exemption.

Under this direction, firefighters working on fire companies, engines and trucks, can respond to EMS and rescue incidents, even if the amount exceeds 20 percent of the workload, and still be covered by the 7(k) exemption. However, many, single-function and dual-function firefighters assigned to ambulances and only respond to EMS and rescue calls.

The survey found that out of all the departments in Los Angeles County, only the Los Angeles City Fire Department did not respond its dual function firefighter/paramedics to fire incidents.

The researcher contacted Chief Bercik (personnel communication, October 4, 1999), the battalion chief in charge of the Operations Control Dispatch Section of the Los Angeles Fire Department (LAFD). Chief Bercik described the ambulance dispatch protocols. She stated that the BLS ambulances, staffed with firefighter/EMTs, are dispatched to structure fires. ALS ambulances are staffed with single function paramedics and dual function firefighter/paramedics. The ALS ambulances do not normally respond to any type of fires. They may be requested by the incident commander, however, they are only used for injuries or injury stand-by. They do not participate in firefighting activities. She stated that the problem is that single-function paramedics and dual-function firefighters ride side by side with no external designation of whom is fire suppression certified. The dispatch computer or the incident commander cannot differentiate between certified and non-fire suppression-certified units, therefore,

ALS units are not dispatched to fires. In addition, dispatching ALS ambulances to fires would increase their workload.

Just looking at the four-part test, if a firefighter does not meet all parts of the test they do not qualify. Therefore, if they do not respond to fires, have requirements in their job description for fire prevention or extinguishment of fires, they do not pass the test.

Using these cases and the results from the survey, it can be surmised that most fire agencies in Los Angeles County are not exposed to a legal liability from misapplying section 7(k). However, the Los Angeles Fire Department may face an additional liability from dual function firefighter/paramedics because they do not meet pass the four-part test.

Recommendations

1. That the Los Angeles Fire Department revisit their dispatch protocols and fireground operations to include dual function firefighter/paramedics on fire dispatches. And that the firefighter be given the responsibility to fight the fires, not just stand by for injuries. This may include the redesignation of ALS ambulances that have dual-function firefighters or assigning dual-function firefighter/paramedics to specific ambulances.

As stated in the “Results” section, most fire agencies in Los Angeles County employ a system of ALS transport units. These units respond to all EMS incidents and transport patients to the local receiving hospitals. However, all agencies, save one, also respond to fires in their district. Admittedly, the amount of fire protection duties falls below the 80 percent threshold. However, the courts have determined that these units

form an integral part of the fire protection agency. And thus, the agencies may employ section 7(k) to determine overtime payments.

In the City of Los Angeles, ALS ambulances do not respond to fire incidents. Many agencies respond their ALS ambulances to fire incidents to supplement their fire resources. The Los Angeles City Fire Department with the amount of resources does not need to supplement their fire response with an ambulance. However, this may open them to the possible of increased legal exposure.

In addition, the firefighter/paramedics must have the authority and responsibility to actively fight fires. In Nalley v. Baltimore (1992) the court found that “paramedics who are not permitted to fight fires or enter a burning building and who are only dispatched to fires to treat injured individuals are not engaged in fire protection activities under the four-part test.”

2. That the Los Angeles Fire department and the Los Angeles City Attorney actively explore and investigate the city’s legal responsibilities. It should make a good faith and reasonable effort to find out how the FLSA governs its employees.

By dispatching and utilizing dual function firefighter/paramedics at fires, the LAFD will limit any future legal liability from the 7(k) exemption. However, the LAFD has not utilized the ALS members in the past, therefore, there may be a large legal exposure due to the 7(k) exemption.

According to Chamberlin (1999), the attorney involved in Acrich v. Los Angeles (1999), successful plaintiffs are usually entitled to recover double the amount of improperly paid back wages. This is called “liquidated damages” and is essentially in lieu of interest. Liquidated damages are mandatory unless the employer proves that in

made a good faith and reasonable effort to find out how the FLSA governed its employees, and had an objectively reasonable basis to believe that its wage practices were legal under the FLSA.

3. That all departments should maintain accurate records, including task-on-time that personnel are involved. These records should also include the time spent on emergency activities and training. In addition, you should track personnel assignments and frequency of rotation between different type of apparatus. Proper documentation will show that members do have the responsibility and authority to engage in fire protection. This will assist in any future challenges to the department's implementation of the 7(k) exemption.

4. That all departments continually monitor relevant court cases to identify the court's interpretation of the FLSA. The issues are being modified each month with court cases in the various districts. Therefore, each department should monitor the courts in their district and the other districts for the precedence set.

5. That departments take an active role with the Department of Labor and their elected officials to clarify the issue of EMS personnel and the 7(k) exemption. As Bynoe (1995) stated, there are two ways to solve the FLSA issue. The Department of Labor's occupational title of firefighter could be modified to reflect that EMS is, in fact, an integral part of fire protection activities. The second solution would be to modify the FLSA regulation to permit fire department's personnel to engage in EMS work under section 7(k).

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Appendix

Appendix A Survey Results

Name	Members	System	Level of Training	Schedule	Section 7(k)	Respond to Fires?
Alhambra FD	22	ALS Tsp	Dual	24	Yes	Yes
Arcadia FD	51	ALS Tsp	Dual	24	Yes	Yes
Avalon FD	7	BLS Tsp	Firefighter	(a)	Yes	Yes
Beverly Hills FD	81	ALS Tsp	Dual	24	Yes	Yes
Burbank FD	140	ALS Tsp	Dual	24	Yes	Yes
Compton FD	72	ALS Tsp	Dual	24	Yes	Yes
Culver City FD	74	ALS Tsp	Dual	24	Yes	Yes
Downey FD	76	ALS Tsp	Dual	24	Yes	Yes
El Segundo FD	58	ALS Tsp	Dual	24	Yes	Yes
Gardena FD	38	ALS Tsp	Dual	24	Yes	Yes
Glendale FD	190	ALS Tsp	Dual	24 (b)	Yes	Yes
Hermosa Beach FD	19	Combo	Dual	24	Yes	Yes
Inglewood FD	73	ALS Tsp	Dual	24	Yes	Yes
Jet Propulsion Lab FD	16	BLS Non-Tsp	Firefighter	9 (c)	No	Yes
Los Angeles City FD	2738	Combo	Single/dual	24	Yes	No
Los Angeles County FD	2694	ALS Non-Tsp	Dual	24	Yes	Yes
La Habra Heights FD	29	ALS Tsp	Dual	24	Yes	Yes
La Verne FD	24	ALS Tsp	Dual	24	Yes	Yes
Long Beach FD	137	ALS Tsp	Dual	24	Yes	Yes
Lynwood FD	30	BLS Non-Tsp	Firefighter	24	Yes	Yes
Manhattan Beach FD	31	ALS Tsp	Dual	24	Yes	Yes
Monrovia FD	48	ALS Tsp	Dual	24	Yes	Yes
Montebello FD	55	ALS Tsp	Dual	24	Yes	Yes
Monterey Park FD	53	ALS Tsp	Dual	24	Yes	Yes
Pasadena FD	160	ALS Tsp	Dual	24	Yes	Yes
Redondo Beach FD	60	ALS Non-Tsp	Dual	24	Yes	Yes
San Gabriel FD	33	ALS/BLS Tsp	Dual	24	Yes	Yes

San Marino FD	21	ALS Tsp	Dual	24	Yes	Yes
Santa Fe Springs FD	80	ALS/BLS non- Tsp	Dual	24	Yea	Yes
Santa Monica FD	98	ALS Non-Tsp	Dual	24	Yes	Yes
Sierra Madre FD	47	BLS Tsp	Firefighter	12 (d)	No	Yes
South Pasadena FD	25	ALS Tsp	Dual	24	Yes	Yes
Torrance FD	185	ALS Non-Tsp	Dual	24	Yes	Yes
Vernon FD	83	BLS Non-Tsp	Firefighter	24	Yes	Yes
West Covina FD	73	ALS/BLS Non-Tsp	Dual	24	Yes	Yes

(a) Avalon Fire Department works a 53-hour workweek and is paid based upon a 40-hour workweek. 24-hour overtime shifts are paid time and a half for 14 hours.

(b) Glendale subtracts sleep time from FLSA hours worked when calls are not run between midnight and 0600 hours.

(c) The Jet Propulsion Laboratory Fire Department operates under a federal contract to provide fire protection to the labs. The firefighters have three platoons each working a nine-hour shift.

(d) Sierra Madre Fire Department uses volunteers to staff the BLS ambulance. The members work 12-hour shifts and respond to fires.

Appendix B FLSA SURVEY

Name of Department _____

Number of members _____

What level EMS service does your department provide?

ALS Transport	BLS Transport	ALS non-transport	BLS non-transport
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Number of ALS transport resources _____

Number of ALS non-transport resources _____

Number of BLS transport resources _____

Number of BLS non-transport resources _____

Who provides the EMS service?

Single function paramedics

Dual function firefighter/paramedics

Single function firefighters

Civilian personnel

What is their schedule?

24 hrs/ wk

40 hours/wk

Other _____

How are they paid?

53 hr/wk

40 hr/wk

Other _____

Do they respond to fires?

Yes

No

Notes:

Date _____ Time: _____ Contact: _____